

Errera
10/634,438

REMARKS

Allowance of claims 25-27 is acknowledged.

Claims 1-4, 9-13, 15, 17, and 19-22 were rejected as being unpatentable over Swapp in view of the newly cited reference to Oh.

As noted earlier in the prosecution of this application, Swapp has a layout tool for use "by carpenters, builders, contractors, tradesmen and the like to print several commonly used layout mark combinations in a series when the tool is rolled along a surface, such as those used for rafters, joists, studs, flooring, roofing, paneling, etc." (see col. 1, lines 5-10, underlining added for emphasis). There is nothing in this reference which suggests the use of such a tool for embossing a food item. Even though parent claim 1 calls for the roller device in combination with a "food product", the Examiner persists in taking the view that "the use of the device with a food product, such is intended use and provides no structural limitations in the claims", ignoring the fact that the food product is being claimed as part of the combination and therefore is in fact a structural limitation. In order to finesse this issue, claim 1 has been amended to recite that the food product has an impressionable surface. In Swapp, printing of layout marks is on wood products used in the building trade, obviously not having impressionable surfaces.

Oh has a hand operated ink stamping device and was cited for a cover over a portion of the printing wheel. This patent, also, has no relation to any food product.

Claims 7, 16 and 23 were rejected as being unpatentable over Swapp in view of Oh and further in view of Kuzyk.

As Kuzyk discloses a rolling pin with cutters to slice through dough as it is rolled along the dough, it is not clear why any cutting tool would be used in Swapp since the latter is designed only to place ink markings on lumber.

Claim 28 was rejected as being unpatentable over Blaul in view of Swapp.

Blaul discloses a rolling pin with an embossed outer surface for imprinting an embossed surface on a flat sheet of dough.

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As noted above, Swapp has apparatus for placing layout ink markings on lumber, a totally unrelated art. Swapp has a simple wheel with an ink pad in contact with the outer surface of a wheel for doing this. In the present invention, as called for in claim 28, an ink pad is not necessary (except if coloring is desired), as it is the embossing which provides the distinctive markings. Without the ink pad in Swapp, the device could not function at all. The issue of the ink pad relates to the issue of motivation for combining references.

Applicant's position is as follows: first, the arts to which the two references relate, are totally unrelated to each other and far beyond what would be obvious to one skilled in the art, and secondly, it is not seen how the teachings of Swapp could be adapted to the rolling pin of Blaul.

In view of the position persisted by the Examiner that, in effect, no matter how the food product is claimed, the presence of the food product is merely a statement of intended use, a number of method claims, 29-36, have been added. The new method claims include structure paralleling the apparatus claims and therefore in the opinion of the undersigned should be examined along with the apparatus claims. The method claims are believed to be drawn to allowable subject matter for the same reasons being given for the allowability of the apparatus claims.

The Examiner is requested to call the undersigned if further changes are required to obtain allowance of the application.

A favorable action is solicited.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited by fax to 571-273-8300 on the date indicated below.

Date: January 18, 2008



Alfred Walker